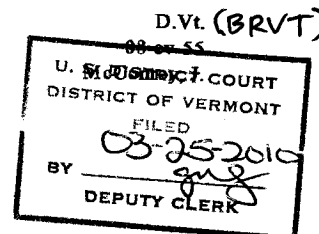


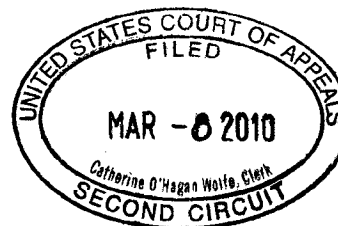
United States Court of Appeals  
FOR THE  
SECOND CIRCUIT



At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 8<sup>th</sup> day of March, two thousand ten,

Present:

John M. Walker, Jr.,  
Debra Ann Livingston,  
*Circuit Judges,*  
Lewis A. Kaplan,\*  
*District Judge.*



Jonathan Crowell, Samantha Kilmurray,

*Plaintiffs-Appellants,*

v.

09-4100-cv

Robert Kirkpatrick, Michael Gorman, Chuck Aleck,  
Peter DiMarino,

2:08-cv-55

*Defendants-Appellees.*

Appellants, through counsel, have filed a motion for remand, to permit the district court to consider a motion pursuant to Fed. R. Civ. P. 60(b). However, Appellants have yet to file a Fed. R. Civ. P. 60(b) motion in the district court. Upon due consideration, it is hereby ORDERED that the motion for remand is DENIED as premature because the Appellants have not followed the procedure established in *Toliver v. County of Sullivan*, 957 F.2d 47 (2d Cir. 1992). Because the district court may entertain and deny a Fed. R. Civ. P. 60(b) motion after a notice of appeal has been filed, a

\*Lewis A. Kaplan, of the United States District Court for the Southern District of New York, sitting by designation.

SAG-ALJ

CERTIFIED:

MAR - 8 2010

motion by the Appellants for remand to the district court is necessary only after the Fed. R. Civ. P. 60(b) motion has been filed and the district court indicates that it intends to grant the motion. *See id.* at 49.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "DIST. OF APP.".

SAO-ALJ

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A TRUE COPY  
Catherine O'Hagan Wolfe, Clerk

by \_\_\_\_\_  
DEPUTY CLERK